

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 24255 of 2006(K)

AGAINST THE ORDER IN EP.70/2004 IN
OS.143/2002 of PRINCIPAL SUB COURT,ALAPPUZHA

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PETITIONER:

A.P.THOMAS, AGED 51 YEARS,
S/O. A.A.PETER, ARASSER KADAVIL,
CIVIL STATION WARD, ALAPPUZHA.

BY ADV. SRI.S.SANAL KUMAR
SMT.BHAVANA VELAYUDHAN

RESPONDENT:

STATE BANK OF INDIA,
BEACH BRANCH, ALAPPUZHA.

BY ADV. SRI.GEORGE THOMAS(MEVADA), SC, SBI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC 24255 OF 2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE OBJECTION FILED BY THE JUDGMENT DEBTOR IN EP NO.70 OF 2004 IN OS NO.143 OF 2002 ON THE FILE OF THE SUB COURT, ALAPPUZHA.

EXT.P2 : TRUE COPY OF THE DRAFT PROCLAMATION IN OS NO.143 OF 2002 ON THE FILE OF THE SUB COURT, ALAPPUZHA.

EXT.P3 : TRUE COPY OF THE SALE NOTICE IN EP NO.70 OF 2004 IN OS NO.143 OF 2002 ON THE FILE OF THE SUB COURT, ALAPPUZHA DATED NIL.

/TRUE COPY/

PA TO JUDGE.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 24255 OF 2006

Dated this the 17th day of August, 2007

JUDGMENT

The order of the Execution court directing sale of the decree schedule property in a mortgage decree is under challenge in this Writ Petition under Article 227 filed by the petitioner, judgment debtor. The ground which is prominently raised in the objection, Ext.P1, filed under Rule 66 of Order XXI is that the value of the property is such that it is not necessary to proclaim and sell the whole property but it will be sufficient if a portion of the property is proclaimed and sold. Learned counsel cited decisions and submitted that the learned Subordinate Judge should be directed to pass fresh orders considering the ratio of the decisions.

2. Sri.George Thomas(Mevada), counsel for the 1st respondent Bank submitted that even according to the petitioner the market value is Rs.80,000/- per cent and the extent of the property being only 6 cents, the maximum price which will be realised by selling even the whole property is only Rs.4,00,000/-. The Decree debt is around Rs.4,00,000/-. Sri.George Thomas also submitted that the house is situated towards the middle of the property and it will be practically difficult to separate a portion of the property and sell the same.

Having considered the rival submissions made at the Bar, I am of

the view that it is for the petitioner to identify a purchaser who will be prepared to buy any portion of his property for a price equal to the amount necessary for discharging the decree debt in full. Under these circumstances, by virtually upholding the grounds raised in the Writ Petition, I dispose of the Writ Petition itself directing that the order of stay presently passed will continue for a period of 4 more months from today. It is open to the petitioner to identify a purchaser who is willing to buy any portion of the property in the meanwhile, so that the prospective purchaser will pay the entire balance decree debt to the Bank. Once such a purchaser is identified, the petitioner will take him to the Bank and the Bank will render all necessary assistance so as to facilitate sale of the property and the petitioner will also ensure that the purchaser pays the amounts necessary for paying off the debt directly to the Bank. At any rate, the order of stay presently passed will not continue after four months from today.

PIUS C. KURIAKOSE, JUDGE

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